



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2015-0828; FRL-9987-77-OW]

Proposed Modification to National Pollutant Discharge Elimination System (NPDES)

General Permit for Stormwater Discharges from Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Modification to the General Permit for Construction Stormwater Discharges and Request for Public Comment.

SUMMARY: All ten Environmental Protection Agency (EPA) Regions today are proposing for public comment a modification to the 2017 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities, also referred to as the “2017 Construction General Permit (CGP)” or “2017 CGP” which became effective on February 16, 2017. The EPA is proposing a modification to the 2017 CGP that is limited to clarifying the intent of several requirements and ensuring consistency with the Construction and Development Effluent Limitations Guidelines and New Source Performance Standards. This action is hereafter referred to as the “proposed modification” or “draft modified permit.” The proposed modification, if finalized, would replace several existing conditions in the 2017 CGP and relevant fact sheet sections subject to modification, but would not affect any other terms and conditions of the existing permit, including: the eligible coverage area; the number or type of entities eligible to be covered by the permit; nor the five-year permit term of the current 2017 CGP, which will expire on February 16, 2022. The current 2017 CGP remains in effect while the

EPA pursues this action. This **Federal Register** notice describes the proposed modification and where the proposed changes can be found in the 2017 CGP. To assist in the public's review of this proposed modification, the EPA has posted a redline strikeout version of the permit and accompanying fact sheet showing all of the proposed changes in context of the documents they would modify at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>; these documents can also be found in the Docket (EPA-HQ-OW-2015-0828).

DATES: Comments on the proposed modification must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2015-0828 to the *Federal eRulemaking Portal*: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. A written comment must accompany any multimedia submissions (audio, video, etc.). The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed modification, contact the appropriate EPA Regional office listed in Section I.F of this notice, or Emily Halter, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.:

202-564-3324 or email: *halter.emily@epa.gov*.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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I. General Information

A. Does this Action Apply to Me?

1. Entities Covered by this Permit

The proposed modification described herein would not change the types of entities eligible to be covered under the 2017 CGP. The CGP would continue to be available to cover the following entities, as categorized in the North American Industry Classification System (NAICS):

Table 1--Entities Covered by this Draft Permit

Category	Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Construction of Buildings	236
	Heavy and Civil Engineering Construction	237

The EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding the types of activities of which the Agency is now aware that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your site could be affected by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in existing EPA regulations at 40 C.F.R. 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding FOR FURTHER INFORMATION CONTACT

section.

2. Coverage Area of the Draft Modified Permit

The proposed modification described herein would not change the scope of coverage under the 2017 CGP. Coverage would remain available to operators of eligible projects for stormwater discharges from construction activities located in those areas where the EPA is the NPDES permitting authority. A list of eligible areas can be found in Appendix B of the 2017 CGP and include the states of New Hampshire, Massachusetts, New Mexico, and Idaho (until July 1, 2021, which is the date Idaho becomes authorized to implement the NPDES Stormwater program), as well as most Indian country lands, and areas in selected states operated by a federal operator. Permit coverage is also available to operators in Puerto Rico, the District of Columbia, and the Pacific Island territories, among others.

B. How Can I Get Copies of these Documents and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2015-0828. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/ DC) WJC West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the

telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this Federal Register notice electronically through the United States government on-line source for Federal regulations at <http://www.regulations.gov>.

Electronic versions of this draft modified permit and draft modified fact sheet are available on the EPA's NPDES web site at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about the EPA's public docket, visit the Agency's Docket Center homepage at <https://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

C. What Should I Consider as I Prepare My Comments for the EPA?

1. *Submitting CBI.* Do not submit CBI information to the EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment

that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 C.F.R. part 2.

The EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in the Agency's electronic public docket as the Agency receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. As noted previously, CBI information should not be submitted through regulations.gov or by e-mail. When the EPA identifies a comment containing copyrighted material, the Agency will provide a reference to that material in the version of the comment that is placed in the Agency's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the EPA's electronic public docket along with a brief description written by the docket staff.

2. Tips for Preparing Your Comments.

To assist the EPA in reviewing and evaluating public comments, please consider the following tips and suggestions when preparing your comments for the Agency:

- Identify this draft modified permit by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

- Where possible, organize comments by referencing a paragraph or part of the draft modified permit or draft modified fact sheet, whichever applies.
- Explain as clearly as possible why you agree or disagree with the proposed modification.
- Suggest alternatives and substitute language for any requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns.
- Submit your comments by the comment period deadline identified.

D. Will Public Hearings be Held on this Action?

Due to the limited scope of this proposed modification, the EPA has not scheduled any public hearings to receive public comment concerning the draft modified permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 C.F.R. 124.12 concerning the draft modified permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period and must state the nature of the issue the requester would like raised in the hearing. Pursuant to 40 C.F.R. 124.12, the EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the draft modified permit. If the EPA decides to hold a public hearing, a public notice of the date, time, and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the draft modified permit at the public hearing.

E. What Process will the EPA Follow to Finalize the Proposed Modification?

After the close of the public comment period, the EPA intends to issue a final decision on the permit modification. Any modification will not be issued until all significant comments have been considered and appropriate changes made to the draft modified permit. The EPA's responses to public comments received will be included in the docket as part of the final modification issuance. Any construction site operator that has permit coverage under the 2017 CGP prior to the final issuance of the modification will automatically remain covered under the permit and will not have to resubmit or modify their Notice of Intent (NOI) due to the finalized permit modification.

F. Who are the EPA Regional Contacts for the Proposed Modification?

For EPA Region 1, contact Suzanne Warner at tel.: (617) 918-1383 or e-mail at *warner.suzanne@epa.gov*.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637-3856 or e-mail at *venezia.stephen@epa.gov*, or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or e-mail at *bosques.sergio@epa.gov*.

For EPA Region 3, contact Carissa Moncavage at tel.: (215) 814-5798 or e-mail at *moncavage.carissa@epa.gov*

For EPA Region 4, contact Michael Mitchell at tel.: (404) 562-9303 or e-mail at *mitchell.michael@epa.gov*.

For EPA Region 5, contact Brian Bell at tel.: (312) 886-0981 or e-mail at *bell.brianc@epa.gov*.

For EPA Region 6, contact Suzanna Perea at tel.: (214) 665–7217 or e-mail at:
perea.suzanna@epa.gov.

For EPA Region 7, contact Mark Matthews at tel.: (913) 551–7635 or e-mail at:
matthews.mark@epa.gov.

For EPA Region 8, contact Amy Clark at tel.: (303) 312-7014 or e-mail at:
clark.amy@epa.gov.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972–3510 or e-mail at
bromley.eugene@epa.gov.

For EPA Region 10, contact Margaret McCauley at tel.: (206) 553–1772 or e-mail at
mccauley.margaret@epa.gov.

II. Background on the Permit and Proposed Modification

Section 402(p) of the Clean Water Act (CWA) directs the EPA to regulate stormwater discharges under the NPDES program for certain designated sources, including discharges from regulated construction sites. The EPA’s NPDES regulations further specify that permits are required for stormwater discharges from construction activities that disturb at least one acre, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre. See 40 C.F.R. 122.26(a)(1)(ii), (a)(9)(i)(B), (b)(14)(x), and (b)(15)(i). Under the statutory and regulatory authority cited above, the EPA issued the final 2017 CGP on January 19, 2017 (82 FR 6534) and the permit became effective on February 16, 2017.

In accordance with 40 C.F.R. 23.2, the 2017 CGP was considered issued for the purposes of judicial review on January 25, 2017. Within the 120-day period of judicial review under section 509(b) of the CWA, both the National Association of Home Builders (NAHB) and the

Chesapeake Bay Foundation (CBF) filed petitions for review of the 2017 CGP in the United States Court of Appeals in the D.C. Circuit.

After receiving the petitions for review, the EPA engaged in multiple discussions with both NAHB and CBF in which the parties discussed their concerns about certain permit requirements and how those requirements might be subject to confusion and misinterpretation by construction site operators permitted under the 2017 CGP. Through discussions with the petitioners, the following information was brought to the EPA's attention:

- In the current 2017 CGP, providing parenthetical examples within the definition of “operator” describing what type of party could be considered an operator “in most cases” may be confusing. See specifically Parts 1.1.1(a) and (b).
- The permit text for certain erosion and sediment control and pollution prevention permit requirements that implement the Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for Construction & Development (40 C.F.R. part 450) (referred to collectively as “the C&D rule”) may not adequately connect the permit requirements to controlling stormwater discharges as in the C&D rule.
- The explanation in the 2017 CGP regarding legal responsibility for permit compliance in situations where there are multiple operators may be unclear. The explanation for an instance where there are multiple operators at one construction site who each require permit coverage and who divide permit responsibilities among themselves, including the use and maintenance of a shared stormwater control (such as a sediment basin), may be misinterpreted to mean that each operator must perform every permit-related function, even if those responsibilities

were by agreement performed by another operator. Additionally, references to joint and several liability in the current permit may have been an inaccurate way to explain what the permit compliance duties are for multiple operators who share implementation responsibilities under the permit.

Under 40 C.F.R. 122.62(a)(2), the EPA may modify a permit if the Agency is presented with new information during the permit term that was not available at the time of issuance and would have justified the application of different permit conditions at the time of issuance. Based on the information the petitioners provided to the EPA following the issuance of the 2017 CGP, the Agency is proposing a permit modification to clarify the Agency's intent of the related permit requirements.

The proposed modification would remove examples of operators in the definition of operator; align three requirements that implement the C&D rule more closely with the ELG text (one requirement on minimizing dust, one on streambank erosion control, and one on building materials pollution prevention); and clarify the roles and responsibilities of individual operators in multiple operator arrangements. The proposed changes in this modification would simplify the permit language and accompanying fact sheet explanation but would not affect the substantive requirements, applicability, implementation, or enforceability of the permit's current requirements. Only those requirements that the EPA proposes to modify would be reopened in the draft modified permit for public comment (40 C.F.R. 122.62). The proposed modification, if finalized, would replace the existing conditions in the 2017 CGP and relevant fact sheet sections subject to modification, but not affect any other terms and conditions of the permit.

In addition, the proposed modification would not affect the eligible coverage area, the number or type of entities eligible to be covered by the permit, nor the five-year permit term of

the current 2017 CGP, which will expire on February 16, 2022. The current 2017 CGP remains in effect while the EPA pursues this proposed permit modification. The proposed modification is summarized in more detail below.

III. Summary of the Proposed Modification

The EPA proposes the following specific changes to the 2017 CGP:

1. *Removing examples in the definition of “operator”*—The EPA proposes to remove the parenthetical examples of the type of party that may be considered an operator from the definition of “operator.” If a party wishes to obtain coverage under the 2017 CGP for its stormwater discharges from construction activities, it is the operator who is responsible for submitting to the EPA a Notice of Intent (NOI) for coverage under the permit. In the previous 2012 CGP, the EPA defined an “operator” as “any party associated with a construction project that meets either of the following two criteria: a) the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or b) the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).” During the proposal of the 2017 CGP, the EPA received a public comment stating that, “to make the meaning [of “operator”] as clear as possible, it would be helpful for the EPA to include, within the body of the permit, examples of whom it expects to meet part one and part two of the definition.” To address this comment, in the final issuance of the 2017 CGP, the EPA added the requested examples into the two-part definition of operator. These additions, denoted here in *italicized* text, read as follows: “an “operator” is any party associated with a construction project

that meets either of the following two criteria: a) the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (*e.g., in most cases this is the owner of the site*); or b) the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (*e.g., they are authorized to direct workers at a site to carry out activities required by the permit; in most cases this is the general contractor (as defined in Appendix A) of the project*).” See Parts 1.1.1(a) and (b) of the 2017 CGP.

After the EPA issued the final 2017 CGP, petitioners brought to the Agency’s attention that adding the phrase “in most cases” followed by examples of who may be considered an operator might cause further confusion to a party trying to determine if it is an operator or not because those examples would not, in every instance, qualify as operators. For example, with respect to the language added to the Part 1.1.1(a) definition of operator (“*e.g., in most cases this is the owner of the site.*”), the EPA did not intend to indicate that, in every instance, the owner of a site is always considered an operator. The EPA acknowledges that there may be instances where a site owner does not have operational control over construction plans and specifications, and therefore would not be an operator and would not be responsible for seeking permit coverage. Rather than suggesting who might be considered an operator “in most cases,” the EPA proposes to remove the examples from both Part 1.1.1(a) and (b), and allow parties to rely solely on the substantive definition of operator for determining if they should seek permit coverage. See Part 1.1.1 of the draft modified permit.

2. *Aligning language of three requirements with the C&D rule*—The EPA proposes to adjust the wording of two erosion and sediment control requirements and one pollution

prevention requirement in the 2017 CGP to clarify their intent:

- The current requirement in Part 2.2.6 (Minimize Dust) reads as follows: “On areas of exposed soil, the operator must minimize the generation of dust through the appropriate application of water or other dust suppression techniques.” The accompanying fact sheet discusses how this requirement is intended to minimize the discharge of sediment in stormwater from the generation of dust and how dust suppression techniques prevent dust from being generated, minimizing the potential for the dust to accumulate where it is likely to discharge from the site in stormwater discharges. To more precisely convey that dust control is important for preventing sediment from being discharged in stormwater, consistent with the C&D rule at 40 C.F.R. 450.21(a)(5), the EPA proposes to modify the requirement to read, with the addition denoted in *italicized* text: “On areas of exposed soil, minimize dust through the appropriate application of water or other dust suppression techniques *to control the generation of pollutants that could be discharged in stormwater from the site.*” See Part 2.2.6 of the draft modified permit.
- The current requirement in Part 2.2.11 (Minimize erosion of stormwater conveyance channels and their embankments ...) reads as follows: “Minimize erosion of stormwater conveyance channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters. Use erosion controls and velocity dissipation devices within and along the length of any stormwater conveyance channel and at any outlet to slow down runoff to minimize erosion.” Footnote 24 to this requirement states: “Examples of velocity dissipation devices include check dams, sediment traps, riprap, and grouted riprap at outlets.” The accompanying fact

sheet explains that this requirement implements the C&D ELG to “control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges” (40 C.F.R. 450.21(a)(1)), to “control stormwater discharges... to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points” (40 C.F.R. 450.21(a)(2)), to “minimize the amount of soil exposed during construction activity” (40 C.F.R. 450.21(a)(3)), and to “minimize the disturbance of steep slopes” (40 C.F.R. 450.21(a)(4)). To streamline this requirement to more precisely focus on controlling stormwater discharges to minimize erosion at discharge points and to align it with the text of the C&D rule at 40 C.F.R.

450.21(a)(2), the EPA proposes to modify the requirement to read as follows:

“Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.” Footnote 24 would be revised to read as follows:

“Examples of control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of a stormwater conveyance and at the outfall to slow down runoff.” See Part 2.2.11 of the draft modified permit.

- The current requirement in Part 2.3.3(a) regarding storage, handling, and disposal of building products, materials, and wastes reads as follows: “For building materials and building products, provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these products to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas.” One objective the EPA had during the proposal of the 2017 CGP was to

streamline the permit as much as possible so that the permit itself was limited to the actual requirements, while explanatory text or notes were moved to the fact sheet. During this streamlining process, the EPA omitted a note from the 2017 CGP that previously appeared in the 2012 CGP in the equivalent section of the permit (i.e., Part 2.3.3.3). The 2012 CGP provision read as follows: “Note: These requirements do not apply to those products, materials, or wastes that are not a source of stormwater contamination or that are designed to be exposed to stormwater.” Although the EPA omitted this note in the 2017 CGP, the Agency incorporated by reference the relevant fact sheet discussion from the 2012 CGP, which explained that “[t]hese requirements implement the 40 C.F.R. 450.21(d)(2) requirement to ‘minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents ... present on the site to precipitation and to stormwater.’ The permit clarifies that the staging or storage of construction materials, building products, or wastes, which are either not a source of contamination to stormwater or are designed to be exposed to stormwater, are not subject to this requirement.” Therefore, while the EPA incorporated by reference in the 2017 CGP fact sheet the exception to Part 2.3.3(a) for building materials that are not a source of contamination or are designed to be exposed to stormwater, the permit requirement in Part 2.3.3(a) did not explicitly state this as it appears in 40 C.F.R. 450.21(d)(2). To avoid any confusion this omission might cause, the EPA proposes to modify the requirement to read, with the addition denoted in *italicized* text, as follows: “For building materials and building products, provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these products to

precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas. *Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use).*” See Part 2.3.3(a) of the proposed modified permit.

3. *Clarifying individual operator responsibility in multiple operator arrangements—*

The EPA proposes to modify the 2017 CGP to clarify an individual operator’s legal responsibility for permit compliance in situations where there are multiple operators who divide permit responsibilities. In particular, the EPA proposes to remove references to joint and several liability from the current permit since they are, in the Agency’s view, an inaccurate explanation of what the permit compliance duties are for multiple operators who share implementation responsibilities under the permit.

In addition, the EPA proposes to clarify that operators who divide responsibilities do not have to duplicate permit-related functions if one operator is appropriately implementing the requirement for the rest of the operators to be in full compliance with the permit. In the proposed modification, the permit would state that, where there are multiple operators associated with the same site, they may develop a group Stormwater Pollution Prevention Plan (SWPPP) instead of multiple individual SWPPPs, but regardless of whether there is a group SWPPP or multiple individual SWPPPs, each operator is responsible for compliance with the permit’s terms and conditions, notwithstanding how the SWPPP(s) may divide each operator’s responsibilities. This

would apply to a scenario where there are multiple operators associated with the same site through a common plan of development or sale (such as a housing development) at which a shared control exists. In this scenario, the operators may develop a group SWPPP instead of multiple individual SWPPPs, and divide amongst themselves various permit-related functions provided that each SWPPP, or a group SWPPP, documents which operator will perform each permit-related function, including those related to the installation and maintenance of the shared control. Regardless of whether there is a group SWPPP or multiple individual SWPPPs, all operators are legally responsible for compliance with the permit, notwithstanding how the SWPPP(s) may divide each operator's individual responsibilities. In other words, if Operator A relies on Operator B to satisfy its permit obligations, Operator A does not have to duplicate those permit-related functions if Operator B is implementing them for both operators to be in compliance with the permit. However, Operator A remains responsible for permit compliance if Operator B fails to implement any measures necessary for Operator A to comply with the permit. See Part 1.1.1, footnote 1; Part 7.1, footnote 53 (which the EPA now proposes to combine with footnote 52); the accompanying fact sheet explanation for these Parts; and Appendix A Definitions for "Shared Control" of the proposed modified permit.

IV. Analysis of Economic Impacts

Due to the narrow scope of this proposed permit modification and the focus on clarifying the intent of certain requirements rather than changing the underlying requirement itself, the EPA does not expect any change in economic impact from this proposed permit modification. It is therefore unnecessary for the EPA to revise the economic analysis that was prepared for the final 2017 CGP. A copy of the EPA's economic analysis, titled "Cost Impact Analysis for the 2017

Construction General Permit (CGP),” is available in the docket for this proposed permit modification.

V. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) determined that this action is not significant under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

VI. Compliance with the National Environmental Policy Act (NEPA) for the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Construction Activities

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4307h), the Council on Environmental Quality’s NEPA regulations (40 C.F.R. Part 15), and the EPA’s regulations for implementing NEPA (40 C.F.R. Part 6), the Agency has determined that the modifications to the 2017 CGP are eligible for a categorical exclusion requiring documentation under 40 C.F.R. 6.204(a)(1)(iv). This category consists of “actions involving reissuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid (including the appropriate mitigation), there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.” 40 C.F.R. 6.204(a)(1)(iv). The EPA completed an Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the previous 2012 CGP and issued a categorical exclusion under 40 C.F.R. 6.204(a)(1)(iv) for the 2017 reissuance. The EPA determined the analysis and conclusions regarding the potential environmental impacts, reasonable alternatives, and potential

mitigation included in the EA/FONSI were still valid for the 2017 reissuance of the CGP because the permit conditions are either the same or, in some cases, are more environmentally protective.

As stated in Section II of this Federal Register Notice on the Background on the Permit and Proposed Modification, the proposed modification to the 2017 CGP, if finalized, would remove examples of operators in the definition of operator; align three requirements that implement the C&D rule more closely with the ELG text; and clarify the roles and responsibilities of individual operators in multiple operator arrangements. The proposed changes in this modification would simplify the permit language and accompanying fact sheet explanation but would not affect the substantive requirements, applicability, implementation, or enforceability of the permit's current requirements. Therefore, the same analysis and conclusions found in the EA/FONSI for the 2012 CGP still stand for this modification of the 2017 CGP.

Actions may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances. The EPA has reviewed the proposed action and determined that the modification of the 2017 CGP does not involve any extraordinary circumstances listed in 40 C.F.R 6.204(b)(1)–(b)(10). Prior to the issuance of the final modification of the 2017 CGP, the EPA Responsible Official will document the application of the categorical exclusion and will make it available to the public on the Agency's website at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/nepa/search>. If new information or changes in the draft modified permit involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the permit may not meet the criteria for categorical exclusion, the EPA will prepare an EA or Environmental Impact Statement (EIS).

VII. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

Consistent with the EPA's previous determination for the 2017 CGP, this proposed modification to the 2017 CGP, if finalized, would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the requirements in the draft modified permit would apply equally to all construction projects that disturb one or more acres in areas where the Agency is the permitting authority, and the erosion and sediment control proposed provisions increase the level of environmental protection for all affected populations.

VIII. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed action does not have tribal implications as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian tribes. Thus, Executive Order 13175 does not apply to this proposed action.

In compliance with Executive Order 13175, the EPA consulted with tribal officials during the development of 2017 CGP to gain an understanding of and, where necessary, address

any areas of the draft permit that may affect tribal interest. In the course of this consultation, the EPA conducted several outreach activities with tribal officials which are detailed in the Federal Register Notice for the final 2017 CGP (82 FR 6534). During the finalization of 2017 CGP, the EPA also completed the CWA Section 401 certification procedures with all applicable tribes where the permit applies (see Appendix B of the 2017 CGP).

As part of this proposed modification, the EPA reviewed the tribal conditions that were incorporated into the 2017 CGP under Section 401 certifications to identify any requirements that this proposed action might affect. See Part 9 of the 2017 CGP. Only two tribal conditions reference a current permit requirement that is subject to this proposed modification, Part 2.2.11 (Minimize erosion of stormwater conveyance channels and their embankments ...):

- The following condition applies only to discharges on the Pueblo of Isleta Reservation: “Under Minimize erosion, a permittee must secure permission from the Pueblo or affected Pueblo of Isleta land assignment owner if a dissipation device needs to be placed up- or down- elevation of a given construction site. CGP 2.2.11 at pg. 11.” See Part 9.4.2.1(j) of the 2017 CGP.
- The following condition applies only to discharges on the Puyallup Tribe of Indians Reservation: “To the extent feasible, utilize vegetated, upland areas of the site to infiltrate dewatering water before discharge. At all points where dewatering water is discharged, comply with the velocity dissipation requirements of Part 2.2.11 of EPA's 2017 General Construction Stormwater Permit. Examples of velocity dissipation devices include check dams, sediment traps, riprap, and grouted riprap at outlets.” See Part 9.7.4.4(i) of the 2017 CGP.

As stated in Section II of this Federal Register Notice, the proposed modification to the

2017 CGP, if finalized, would remove examples of operators in the definition of operator; align three requirements that implement the C&D rule more closely with the ELG text, including the requirement in Part 2.2.11; and clarify the roles and responsibilities of individual operators in multiple operator arrangements. The proposed changes in this modification would simplify the permit language and accompanying fact sheet explanation but would not affect the substantive requirements, applicability, implementation, or enforceability of the permit's current requirements. Due to the narrow scope of this proposed permit modification and the focus on clarifying the intent of certain requirements rather than changing the underlying requirement itself, the proposed action would not change the interpretation or implementation of the tribal conditions, in particular those referencing Part 2.2.11, and therefore any tribal impacts from this proposed modification would be limited.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: November 28, 2018.

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Dated: November 28, 2018.

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